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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/075,053	02/13/2002	Robert C. Stevens	RST 2 0011-3	8092

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EXAMINER
SIRMONS, KEVIN C

ART UNIT	PAPER NUMBER
3763	

DATE MAILED: 12/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/075,053	STEVENS, ROBERT C.
	Examiner	Art Unit
	Kevin C. Sirmons	3763

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 24 September 2004.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-40 is/are pending in the application.
- 4a) Of the above claim(s) 12-23 and 29-40 is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-22 and 24-28 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date. _____ | 6) <input type="checkbox"/> Other: _____ |

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-2, 6-11, 24-25, 17 and 28 are rejected under 35 U.S.C. 102(b) as being anticipated by Stevens U.S. Pat. No. 5,972,143.

Stevens discloses a reinforced catheter comprising: a elongate flexible tubular member defining a lumen of the catheter, the tubular member having a first end defining a proximal end of the catheter and a second end defining a distal end of the catheter (40); a continuous coil reinforcement member carried on the elongate flexible tubular member and extending from the proximal end of the catheter to the distal end of the catheter (42); a first flexible outer coating covering the coil reinforcement member and the tubular member substantially entirely between the proximal end of the catheter and the distal end of the catheter (44); a second flexible outer coating covering a first portion of the first outer coating between the first transition area of the catheter and said proximal end of the catheter, a second portion of the first outer coating being uncovered by said second outer coating (product-by-process) and defining a flexible distal tip of said catheter, said first coating being softer than said second coating (col. 7); as to claim 2, (col. 7 and 8); as to claim 6, (fig. 4); as to claims 7, 8, (42); as to claims 9-11, (figs. 4a-4f); as to claims 24-25, 27 and 28 (see above rejections).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stevens.

Stevens discloses a reinforced catheter substantially as claimed except for the various harnesses of the first and second coatings.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to vary the hardness of the same or various materials, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended uses as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

Furthermore, applicant has not disclosed that the aforementioned limitations provides an advantage, is used for a particular purpose and solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with the device as taught by Stevens.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Stevens in view of Weber U.S. Pat. No. 5,147,315.

Stevens discloses a reinforced catheter substantially as claimed except for a maker band disposed adjacent the distal end of the catheter on the outer coating. Weber discloses a maker band disposed adjacent the distal end of the catheter on the outer coating (fig. 1). Therefore, it

would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device of Stevens with the marker band as taught by Weber for locating the distal portion of the catheter.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Stevens in view of Weber U.S. Pat. No. 5,147,315 and further in view of Adams et al U.S. Pat. No. 5,843,051.

Stevens in view of Weber disclose a reinforced catheter substantially as claimed except for wherein the marker band is formed of a one of gold material and platinum material. Adams discloses a marker band is formed of a one of gold material and platinum material (41). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device of Stevens in view of Weber with the platinum band as taught by Adams for locating the distal portion of the catheter.

Response to Arguments

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the reinforcement member in the prior art does not extend fully between the proximal and distal ends of the catheter) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). It is the examiner's position that the reinforcement extends in sections from the proximal end to the distal end. Furthermore, a thin adhesive spray tends to be softer than a polymeric outer jacket as shown in col. 7.

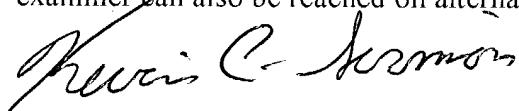
Claims 24 and 26-28 are allowable over the prior art of record.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communication from the examiner should be directed to Kevin C. Sirmons whose telephone number is (703) 306-5410. The examiner can normally be reached on Monday - Thursday from 6:30 am to 4:00 pm. The examiner can also be reached on alternate Fridays.



Kevin C. Sirmons
Patent Examiner
11/29/04